U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30218079

Date: MAR. 4, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a purported expert in artificial intelligence (AI) and mobile application (app) development, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with "extraordinary ability." Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This EB-1 category provides immigrant visas to noncitizens who demonstrate "sustained national or international acclaim" and submit "extensive documentation" of recognition of their achievements in their fields. Section 203(b)(1)(A)(i) of the Act.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner satisfied one initial evidentiary requirement - two less than needed to qualify for a final merits determination. On appeal, the Petitioner asserts that he meets eight other evidentiary criteria and has demonstrated his possession of extraordinary ability in the AI and app development field.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we agree with the Director that the Petitioner has not met the requisite number of evidentiary criteria. We will therefore dismiss the appeal.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that:

- They have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term "extraordinary ability" means a level of expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Evidence

of extraordinary ability must demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary standards. 8 C.F.R. § 204.5(h)(3)(i-x).[1]

If a petitioner meets either of the evidentiary requirements above, U.S. Citizenship and Immigration Services (USCIS) must make a final merits determination as to whether the record, as a whole, establishes their sustained national or international acclaim and recognized achievements placing the noncitizen among the small percentage at their field's very top. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010) (requiring a two-part analysis of extraordinary ability).

II. ANALYSIS

A. The Petitioner

The record shows that a university in the Petitioner's home country of Russia awarded him a *diplom magistra* in engineering. His major fields of study consisted of aviation instruments, and computing and measurement complexes. He then worked in the information technology (IT) field for about six years, developing industrial and financial software for his employers. In 2011, he began working for himself, creating apps for social networks and organizing various business, industrial, and educational forums. In 2015, he also began developing algorithms for trading strategies on the Moscow Stock Exchange.

Since 2020, the Petitioner has completed online coursework in AI and data science and participated in various international AI and machine learning competitions. He seeks to permanently work in the United States, developing AI products and services.

The record supports the Director's finding that the Petitioner demonstrated his "authorship of scholarly articles in the field, in professional or major trade publications or major media." *See* 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner asserts that he also meets the following evidentiary criteria:

B. Receipt of Lesser Prizes or Awards

This criterion requires documentation of a petitioner's receipt of "nationally or internationally recognized prizes or awards for excellence in the field of endeavor." 8 C.F.R. § 204.5(h)(3)(i). When adjudicating this requirement, USCIS should first determine if a noncitizen - as opposed, for example, to their employer - received a prize or award. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1), www.uscis.gov/policy-manual. If so, the Agency should then determine whether the prize or award is nationally or internationally recognized and issued for excellence in the endeavor's field. *Id.*

The Petitioner submitted evidence that he received the following awards:

[1] If the standards do not readily apply to a petitioner's occupation, the noncitizen may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(h)(4).

- First place in a regional "Informatics Olympiad" among students in 59 schools when he was in high school;
- A bronze medal in a 2021 international competition to use machine learning to detect and position catheters and lines on chest x-rays;
- A gold medal in a 2021 international competition to develop an online product-matching system;
- A silver medal in a 2022 international competition to automate the identification of whales and dolphins; and
- The title of "expert" in 2022 on an online competition platform for AI programmers and data scientists.

The Petitioner established that these honors recognize excellence in the AI and app development field. But, as the Director found, the record lacks sufficient evidence of the awards' purported national or international recognition, such as media coverage about them or their presentations at national or international conferences in the field. *See Visinscaia v. Beers*, 4 F.Supp.2d 126, 136 (D.D.C. 2013) (finding insufficient evidence of awards' national or international recognition where the record lacked proof of recognition beyond the presenting organizations). Thus, contrary to 8 C.F.R. § 204.5(h)(3)(i), the Petitioner has not documented that his awards for excellence in the field are nationally or internationally recognized.

C. Membership in Associations Requiring Outstanding Achievement

To meet this requirement, a petitioner must submit documentation of their "membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner provided evidence of his purported memberships in the following four groups:

- An online community of AI programmers and data scientists with more than 3 million members;
- An international community of data science, AI, and machine learning practitioners with more than 40,000 members;
- An organization for people and businesses performing engineering-related activities; and
- An online Russian club for game developers.

The Petitioner has documented his membership in the engineering-related organization and provided a copy of an invitation he received to join the data science, AI, and machine learning community. But the record does not establish his membership in the other two groups or their issuance of memberships. *See Goncharov v. Allen*, No. 3:21-CV-1372-B, 2022 WL 17327304, *5 (N.D. Tex. Nov. 29, 2022) (stating that "[n]o reasonable analysis" could find 8 C.F.R. § 204.5(h)(3)(ii) satisfied without evidence of "associations which grant memberships"). Moreover, the record lacks evidence that any of the four organizations require outstanding achievements of their members or that national or international experts judge the achievements of aspiring members. *See, e.g., Braga v. Poulos*, No. CV 06-5105, 2007 WL 9229758, *5 (S.D. Cal. July 6, 2007), *aff'd*, 317 Fed. Appx 680 (9th Cir. 2009) (holding that, without evidence that any of the organizations required outstanding achievements of their

members, a petitioner's membership in multiple Jiu Jitsu organizations did not satisfy 8 C.F.R. § 204.5(h)(3)(ii)). Thus, the Petitioner has not met this evidentiary requirement.

D. Published Material About the Petitioner

This criterion requires "[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iii). The evidence must include the material's title, date, and author, and any necessary translation. *Id.*

The Petitioner submitted evidence that, in 2022, two business technology websites in Russia published separate articles about him and his work. He also provided evidence from a reputable web analytics company. The company ranked the first website 130th in online traffic among technology-related websites in Russia, while the second website ranked 172nd in the same category. Based on these rankings, the record does not establish the websites as "major trade publications" or "major media" in Russia. *See* 6 *USCIS Policy Manual* F.(2)(B)(1) (listing readership, circulation, or viewership as relevant factors in determining "major trade publications" or "major media" under 8 C.F.R. § 204.5(h)(3)(iii)).

The Petitioner stated that a third Russian website - ranked first in the country in online traffic in the "community and society" category - also published the article that originally appeared on the second technology website. Based on the third website's ranking in Russia, the site appears to constitute a major medium. But the Petitioner did not submit documentary proof to corroborate the site's publication of the article. Thus, the third website does not demonstrate the Petitioner's satisfaction of this evidentiary criterion.

Also, the record does not establish the business technology websites as "professional" publications. The Petitioner has not demonstrated that the websites' intended audiences are professionals in the technology field. *See* 6 *USCIS Policy Manual* F.(2)(B)(1) ("In evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended audience.") For the foregoing reasons, we agree with the Director that, contrary to 8 C.F.R. § 204.5(h)(3)(iii), the Petitioner has not demonstrated that he provided published materials about himself in "professional or major trade publications or other major media."

E. Participation as a Judge of Others' Work

To meet this requirement, a petitioner must submit evidence of their "participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iv). A petitioner must not only show that they were invited to judge the work of others, but also that they actually judged the work. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1).

The Petitioner submitted evidence that, in 2012 and 2013, he served on expert commissions that evaluated the attractiveness of projects presented by universities and small enterprises. A letter from the organizer of the 2012 forum states that the projects that year resulted in recommendations to amend Russia's tax code, optimize a tariff for innovative businesses, and create investment infrastructure. These results indicate that the projects were business- or tax-related. Thus, contrary to 8 C.F.R.

§ 204.5(h)(3)(iv), the Petitioner has not demonstrated that his participation on the commissions involved judging work in AI, app development, or an allied field.

The Petitioner also provided evidence that, on multiple occasions since 2014, he evaluated software products for businesses and educational organizations. Software packages, however, can reflect contributions from people in a variety of fields, including: executives; accountants; and marketing representatives. The Petitioner has not demonstrated that he judged the work of other people in his field, such as software developers. Further, he has not established that he judged or critiqued the software, as opposed to determining which application best suited an individual organization. For the foregoing reasons, the Petitioner has not demonstrated his submission of evidence of his participation as a judge of the work of others in the same or allied field.

F. Original Contributions of Major Significance

To meet this requirement, a petitioner must submit "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." 8 C.F.R. § 204.5(h)(3)(v). USCIS should first determine whether a noncitizen has made original contributions in their field. 6 *USCIS Policy Manual* F.(2)(B)(1). If so, the Agency should then determine whether any of them are of "major significance." *Id.*

As proof of the Petitioner's purported original contributions to his field, he submitted nine support letters. Two educational directors described IT projects that the Petitioner completed for their institutions. One director stated that the Petitioner improved students' average academic performance by developing a website allowing teachers to upload lectures for student access and detailing student information. The other director stated that the Petitioner increased the number of students seeking his institution's services by optimizing its websites' rankings on search engines, almost tripling the sites' traffic. Also, a manager of a bank that previously employed the Petitioner described how the Petitioner attracted additional customers by developing software to receive and send deposits in Russian post offices, thereby extending banking services to sparsely populated areas. Others in the Petitioner's field cited his development of a social media app that garnered more than 17 million downloads and his scholarly articles in the field.

As the Director found, however, the Petitioner has not established that these contributions to his field have "major significance." The IT projects for the educational institutions might have major significance for the organizations, their communities, or the educational field. But the Petitioner has not demonstrated the projects' importance to his field of AI and app development. Also, two data scientists stated that other software developers copied technical and visual components of the Petitioner's social media app. But the record lacks sufficient corroborating evidence to demonstrate that his app design had "major significance" in the field. Further, the Petitioner submitted copies of his published scholarly articles in the field. But the record does not show that others in the field regularly cited his articles or otherwise explain their significance. *See* 6 *USCIS Policy Manual* F.(2)(B)(1) ("[P]ublished research that has provoked widespread commentary on its importance from others working in the field, and documentation that it has been highly cited relative to others' work in that field, may be probative of the significance of the person's contributions to the field of endeavor").

The authors of two of the support letters stated that they had never met the Petitioner but were aware of his work and considered him to be one of the top AI and app developers in Russia. But the record shows that the authors of the other seven letters comprise clients, business associates, and a former employer of the Petitioner. *See Goncharov*, 2022 WL 17327304 at *5 (holding that 8 C.F.R. § 204.5(h)(3)(v) "requires substantial influence beyond one's employers, clients, or customers") (citations omitted).

Also, the support letters do not specify the significance of the Petitioner's contributions to his field. For example, evidence does not identify specific software developers who purportedly copied components of his social media app. To establish "major significance," evidence must show that a petitioner's work has been "widely" adopted or replicated by people in the field who are unaffiliated with the petitioner. *Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022). The evidence must include "specific information relating to the impact of a petitioner's work in the field as a whole." *Visinscaia*, 4 F.Supp.3d at 134.

As the Petitioner has not sufficiently demonstrated the significance of his contributions to his field, we will affirm the Director's finding that he did not meet the evidentiary requirement at 8 C.F.R. § 204.5(h)(3)(v).

G. Display of Work in the Field

This criterion requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases." 8 C.F.R. § 204.5(h)(3)(vii). USCIS first determines whether the displayed work constitutes a petitioner's work product. *See* 6 *USCIS Policy Manual* F.(2)(B)(1). The Agency then determines whether the venues that displayed the work constitute artistic exhibitions or showcases. *Id.* The term "exhibition" means a public showing, as of works of art, objects of manufacture, or athletic skill. *See* Merriam-Webster Online Dictionary, www.merriam-webster.com/dictionary/exhibition.

The Petitioner submitted evidence of social media apps that he developed and his presentation of scholarly articles at scientific conferences in 2022 and 2023. The record demonstrates that he produced all these materials. But, as the Director found, the Petitioner has not established that the venues that displayed his work constitute "*artistic* exhibitions or showcases." *See* 8 C.F.R. § 204.5(h)(3)(vii) (emphasis added); *see also Kazarian*, 596 F.3d at 1122 (affirming our finding that a physicist did not demonstrate display of his work at artistic exhibitions or showcases where he had self-published a textbook, lectured at a community college, and presented at scientific conferences). The record therefore does not demonstrate the Petitioner's satisfaction of this evidentiary criterion.

H. Performance in a Leading or Critical Role

This criterion requires evidence that a petitioner "has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." 8 C.F.R. § 204.5(h)(3)(viii). USCIS should first determine whether a petitioner has performed in a leading or critical role for an organization, establishment, division, or department. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1). A leading role means that a petitioner is (or was) a leader within the organization,

establishment, division, or department. *Id.* A critical role means that a petitioner has contributed in a way that is of significant importance to the organization's results or activities. *Id.*

USCIS should next determine whether the organization, establishment, division, or department has a distinguished reputation. *Id.* The word "distinguished" means "marked by eminence, distinction, or excellence." Merriam-Webster, Online Dictionary, www.merriam-webster.com/dictionary/ distinguished. Relevant factors may include: an organization's relative size or longevity; the scale of its customer base, or relevant media coverage of it. *Id.*

The Petitioner asserts that he led his business and provided critical IT services to customer organizations. The record demonstrates that he led his business. But he has not established that it had a distinguished reputation. The Petitioner argues that it developed several successful social media apps, including the one that garnered more than 17 million downloads. But the business itself was small, as the Petitioner constituted its sole employee. Also, it operated only about nine years, as the Petitioner stated that he sold it in 2020. He has not submitted any evidence that the business received media coverage or awards. Thus, contrary to 8 C.F.R. § 204.5(h)(3)(viii), the record does not establish that his business had a distinguished reputation.

The Petitioner has not demonstrated that three of the other four organizations have distinguished reputations. Evidence regarding a regional government ministry, an educational organization, and a marketing company that does business with the Petitioner does not establish the entities' eminence, distinction, or excellence. But the record shows that the company whose platform offered the Petitioner's apps is Russia's most popular and largest social medium and network. At the end of 2022, the company had the sixth most popular website in the country and the 16th most popular in the world. Thus, based on size and customer base, we agree that the social media company has a distinguished reputation.

The evidence, however, does not demonstrate the Petitioner's performance in a critical role for the social media company. The company allowed him to download his apps onto its game platform, but it did not employ him. We recognize that he developed one of the three most popular apps on the company's platform. But the record lacks details regarding the importance of the Petitioner or his apps to the company. In brief and virtually identical letters, the company's general director and game platform administrator verified the downloading of the Petitioner's app onto the company's platform and the popularity of one of his apps. The letters state that he "made a considerable contribution to our Company development." But the letters do not explain how the Petitioner contributed to the company's results or activities, or the importance of his contributions. *See Goncharov*, 2022 WL 17327304 at *6 (affirming USCIS' finding that evidence of a petitioner's purported performance in a critical role must explain the work's importance to the organization). The Petitioner therefore has not met this evidentiary requirement.

I. High Salary in the Field

This criterion requires evidence that a petitioner "has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner submitted evidence that he has received income from three sources: his business; stock trading algorithms he developed for a brokerage; and stock trading algorithms he developed for a bank. He documented that, from 2015 to 2021, his total income exceeded the average wages of software developers in his region.

The Petitioner's region, however, lies about 250 miles from Moscow, Russia's largest city. Thus, evidence of wages in his region may not accurately state the average wage of software developers in Russia as a whole. *See Buletini v. INS*, 860 F. Supp. 1222, 1232 n.12 (E.D. Mich. 1994) (stating that the Act "clearly contemplates judging an alien's extraordinary ability, or lack thereof, by national standards"). He has therefore not sufficiently demonstrated his commandment of a high salary in relation to others in the field.

III. CONCLUSION

The Petitioner's evidence does not meet at least three of the initial evidentiary criteria for the requested immigrant visa category. We will therefore affirm the motion to reopen's dismissal.

ORDER: The appeal is dismissed.